

10 February 2005

AZERBAIJAN: Supreme court claims constitutional right doesn't exist

By Felix Corley, Forum 18 (<https://www.forum18.org>)

Azerbaijan's Supreme Court has decided that a Jehovah's Witness can be forced to do military service – even though the constitution claims that "alternative service instead of regular army service is permitted." The court argued that, as no law on civilian alternative service exists, the appeal of Mahir Bagirov must be rejected. Azerbaijan has broken a promise to the Council of Europe to introduce a law by January 2003. Sayad Kirimov, deputy head of parliament's administrative and military law department, told Forum 18 News Service that "the Supreme Court can't use the absence of a law to deprive someone of their constitutional rights." Bagirov's lawyer told Forum 18 that the ruling will be challenged at the European Court of Human Rights. After this Supreme Court decision, Bagirov "expects to be arrested by the military police and disappear into a military barracks where he anticipates being subjected to brutal treatment as an alleged deserter."

Despite a provision in the constitution guaranteeing the right to perform alternative service for those unable to serve in the army on grounds of conscience, Azerbaijan's Supreme Court on 4 February failed to protect this right in the case of Mahir Bagirov, a Jehovah's Witness. The court argued that the lack of a law on alternative service meant this right does not exist. "I don't know the exact details of this case, but it's my subjective view that the court took the wrong decision," Sayad Kirimov, deputy head of parliament's administrative and military law department, told Forum 18 News Service from the capital Baku on 9 February. "The constitution has direct legal force and the Supreme Court can't use the absence of a law to deprive someone of their constitutional rights."

Article 76 (2) of the constitution states: "If beliefs of citizens come into conflict with service in the army then in some cases envisaged by legislation alternative service instead of regular army service is permitted."

Also condemning the court ruling was Eldar Zeynalov, the head of the Baku-based Human Rights Centre of Azerbaijan who has been closely following Bagirov's case. "This was an illegal decision which violated the constitution, the spirit of the law and international law to which Azerbaijan is a party," he told Forum 18 from Baku on 9 February. "The Supreme Court simply doesn't want to take responsibility for a decision that will establish a precedent."

British lawyer Richard Daniel, who represented Bagirov at the Supreme Court, told Forum 18 on 8 February that Bagirov intends to challenge the ruling at the European Court of Human Rights in Strasbourg. He now fears for his client in the wake of the rejection of his final appeal. "He expects to be arrested by the military police and disappear into a military barracks where he anticipates being subjected to brutal treatment as an alleged deserter."

Adil Gadjiev, an official at the ombudsman's office in Baku, refused to comment on the court ruling, but said his office would be prepared to try to help Bagirov if he seeks such help. "We didn't allow his detention by the military police and forcible recruitment," he told Forum 18 from Baku on 9 February, though he could not specify what help the office could offer. Gadjiev declined to say what young men whose faith does not permit them to fight should now do to establish their constitutional right not to serve in the armed forces.

Bagirov, a 28-year-old doctor who is married with a young daughter, started attending Jehovah's Witness meetings in 1998 and was baptised in April 1999. Since then he has tried in vain to be removed from the military reserve to which he had automatically been inducted as a medical graduate and for which he had taken the oath of allegiance. "As a result of his study of the Bible, in good conscience he felt that he could no longer take up arms or support the military in any way," Daniel told Forum 18. "Therefore, he sought from the Ministry of Defence removal of his name from the list of reserve officers and registration as a conscientious objector. The Ministry have adamantly refused to comply."

Bagirov was most recently called up in May 2004 and ordered to report to a military unit. On 9 June he lodged a suit at Baku's Khatai district court, arguing that the insistence that he perform military service was illegal and in violation of Article 76 part 2 of the constitution, which declares: "If the beliefs of citizens come into conflict with service in the army then in some cases envisaged by law alternative service instead of regular army service is permitted." After the appeal court rejected his suit on 16 September (see

F18News 6 October 2004 http://www.forum18.org/Archive.php?article_id=425), Bagirov took his case to the Supreme Court, which heard the case on 30 December and 3 February.

"The Military Commissariat have totally misconstrued or misrepresented two matters of law," Bagirov's lawyer, Richard Daniel, complained. "Reduced to simplicity, they say that as there is no law on alternative civilian service yet in place in Azerbaijan, there can be no right of conscientious objection. The Court has ignored international agreements entered into by Azerbaijan which make clear that the right to conscientious objection is not dependent on the provision of alternative service." Daniel also complains that the court's interpretation of "religious ministers" was too narrow and excluded leaders of "non-traditional" faiths such as the Jehovah's Witnesses, who have different systems of leadership to faiths like the Islamic or Orthodox communities.

Zeynalov of the Human Rights Centre of Azerbaijan argues that, far from showing the independence of the court, the ruling in Bagirov's case shows that the judges are "totally dependent" on public opinion and the view of the government. "Government pressure can't take the form of a direct instruction to the judge, but 'telephone law' remains the norm and the judge in this case was possibly 'advised' not to take this responsibility of establishing a precedent that individuals can opt for alternative service."

Zeynalov points out that the authorities have already obstructed the activity of the Jehovah's Witnesses, granting registration as a religious community only after a long battle, trying to restrict their activity and preventing foreign Jehovah's Witness leaders coming to serve the community in Azerbaijan. Zeynalov contrasted this with the arrival of foreign citizens to lead the Russian Orthodox, Catholic and Lutheran communities.

As part of its commitments on joining the Council of Europe, Azerbaijan should have adopted a law on alternative service by January 2003, but failed to do so. "This was one of its commitments and Azerbaijan failed to meet it," Mats Lindberg, the Council of Europe's representative in Baku, told Forum 18 on 9 February. "We hope parliament here will adopt this law soon. The Council of Europe gave its expert advice on the draft last September."

However, Kirimov of the parliament confirmed that there has been no progress since the first reading last year. "This issue has been hotly debated, in parliament, in parliamentary commissions and in the media," he told Forum 18. Although insisting that as an obligation, the alternative service law "will be adopted", Kirimov maintained that drafting the law was no easy matter. "There are many questions needing decisive answers so that disputes won't arise on implementation. And checking the faith and conscience of an individual will be difficult. Does a person really follow these beliefs or is he just trying to evade service?"

Zeynalov chided the Strasbourg-based Council of Europe for failing to punish Azerbaijan for missing the deadline for this and many other commitments. "The Parliamentary Assembly didn't react adequately," he told Forum 18. "That's the problem. There is no pressure from Strasbourg." He maintains that parliament will defer any decisions until after the next elections, due in November. "Nothing will happen this year," he insisted. "They will find new arguments and excuses to postpone and postpone adopting an alternative service law. The beginning of 2006 is my most optimistic forecast for adoption."

However, Krzysztof Zyman, the official responsible for the South Caucasus at the Council of Europe secretariat, rejects suggestions that the organisation has not done enough to hold Azerbaijan to its commitments. "The failure to adopt an alternative service law is the reason the Council of Europe is maintaining the pressure," he told Forum 18 from Strasbourg on 10 February. "The issue is raised regularly within the framework of the monitoring of commitments by the Committee of Ministers. I am aware that deadlines are not always met, but we expect Azerbaijan to meet this commitment."

No other conscientious objectors are known to be challenging forcible conscription at present. In the past, a handful of Jehovah's Witnesses and other objectors have won the right not to serve through the courts or with the help of the ombudsman's office, but without establishing a legal precedent.

Daniel complained that the legal cases Bagirov has been forced to undergo to protect his constitutional right have been "very time-consuming for him and very expensive". "The amount of time off work and the harassment by the military have meant that, although his professor is well disposed to him, he has had to resign his post to concentrate on the legal battle."

Daniel believes Azerbaijan's army is not yet ready to allow young men to do alternative service. "The military reject the concept that they are in breach of their undertaking to the Council of Europe on the basis that Azerbaijan is a sovereign state, the military are operating at 67 per cent of resources and 'there is a war going on'," he told Forum 18, referring to Azerbaijan's unresolved conflict with local Armenians in the enclave of Nagorno-Karabakh. (END)

For more background information see Forum 18's Azerbaijan religious freedom survey at http://www.forum18.org/Archive.php?article_id=92

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<http://www.nationalgeographic.com/xpeditions/atlas/index.html?Parent=asia&Rootmap=azerba>

If you need to contact F18News, please email us at:
f18news @ editor.forum18.org

Forum 18
Postboks 6603
Rodeløkka
N-0502 Oslo
NORWAY